IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2007

CORAM

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

Writ Petition Nos.2097, 12562 and 42119 of 2006
and WPMP.Nos.2381, 2382,14146 and 1 of 2006

R.Egambaram .. Petitioner in all the W.Ps.

Versus

1.The Chairman
Chennai Port Trust
Chennai-1. ..1st Respondent in all WPs

2.The Controller of Stores (I/C)
Chennai Port Trust
Chennai 600 001 .. 2nd Respondent in all W.Ps.

W.P.No.2097 of 2006: Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in proc.E4/677/04/c dated 28.06.2005, and quash the same.

W.P.No.12562 of 2006: Writ Petition filed under Article 226 of the Constitution of India, praying for issue of a writ of Certiorarified Mandamus, to call for the records of the second respondent in proc.E4/1914/04/c dated 26.12.2005 and quash the same.

W.P.No.42119 of 2006: Writ petition filed under Article 226 of the Constitution of India, praying for issue of a writ of Certiorari, to call for the records of the second respondent in proc.E4/9464/06/c dated 10.08.2006 and quash the same.

For Petitioner : Mr.R.Egambaram(Party-in-person)

For Respondents : Mr.R.Gowtham Narayanan
for R1 and R2.

COMMON ORDER

All these writ petitions have been filed by the same person, who is working as Store Supervisor at Chennai Port Trust.

https://hcservices.ecourts.gov.in/hcservices/ 2. W.P.No.2097 of 2006 is filed challenging the order of the second respondent, the Controller of Stores, Chennai Port Trust dated 28.06.2005, under which the second respondent has imposed a

punishment withholding one increment for one year with cumulative effect, instead of withholding two increments for one year with cumulative effect.

3. The second respondent has issued a charge-memo against the petitioner on 21.01.2004, alleging that the petitioner was missing from the work spot on 21.01.2004 from 10.30 hours to 12.00 hours and behaved in an indisciplined manner to the superior officers. The petitioner has submitted his explanation on 03.02.2004 by his subsequent letter dated 28.04.2004 addressed to the Deputy Chairman, Chennai Port Trust. He requested permission to avail the services of one D.Purushothaman in the enquiry, which was not permitted. Subsequently, enquiry was conducted and witness were examined and on the request of the petitioner the copy of the movement register was also supplied to him containing the entry on 21.01.2004. The copy of the enquiry report submitted by the enquiry officer dated 24.01.2005 was sent to the petitioner by the second respondent by his communication dated 14.02.2005 asking the petitioner to give his remark. The second respondent by order dated 23.02.2005, accepting the enquiry officer's report, finding that the petitioner has committed misconduct under Part V, Section 8(a)(iv) of the Madras Port Trust Employees' CCA Regulationd 1988, has awarded punishment of withholding two increments for one year with cumulative effect. The petitioner on 01.04.2005 has filed an application to the Deputy Chairman, Chennai Port Trust against the said order dated 23.03.2005 and the Deputy Chairman, who is the Controller of Stores(in-charge) has passed an order dated 28.06.2005, by modifying his earlier order of punishment to one of withholding one increment for one year with cumulative effect, instead of withholding two increments for one year with cumulative effect. It is this order of the second respondent which is challenged by the petitioner.

4. The main ground raised by the petitioner is that he was not permitted to appear through union and the said denial amounts to violating the principles of natural justice, apart from bringing about the factual aspect about the depositions given by various witnesses and questioning the validity of said depositions. He has also raised the point that the enquiry officer has acted in a biased manner and passed the order in a hasty manner, without giving opportunity to the petitioner and without following Rule 19 of Madras Port Trust CCA Regulations. He would also state that the enquiry officer has not given a chance to the petitioner to find out the genuineness of the movement register, apart from the fact that the disciplinary authority has imposed punishment without following the Rules under the Madras Port Trust CCA Regulations. He would also submit that the second respondent, Deputy Chairman, has reduced the penalty without assigning any reasons, as a non-speaking order. He would also state that the petitioner was placed under a prolonged suspension and enquiry proceedings were deliberately delayed. He would also state that as against the order of the second respondent, he has filed an appeal before the Secretary to Government of India, Ministry of shipping, New Delhi,

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as per Rule 21(a) of the Madras Port Trust CCA Rules, and the same has not been disposed of so far. In the mean time, the order of suspension passed against the petitioner on 21.01.2004 was revoked on 22.08.2005 and he has also made a representation to the second respondent on 29.08.2005 for payment of full wages during the period of suspension on the basis that the suspension is a prolonged one. He has also made subsequent reminder and representation to the appellate authority, viz., Secretary to Government of India, Ministry of Shipping, New Delhi on 23.09.2005 and subsequently on 23.11.2005 by way of review also and no order has been passed. In view of the same, the writ petition is filed challenging the order of punishment passed by the second respondent dated 28.05.2005. He has also raised the point while arguing as party-in-person, that the second respondent being the chairman of stores-acting, has no jurisdiction to pass the impugned order.

5. The petitioner, party-in-person has reiterated all the averments which are made in the affidavit filed in support of the writ petition, by making his submission.

6. On the other hand, Mr.Gowtham Narayanan, learned counsel appearing for the respondent, eventhough has not filed any counter affidavit in this case, has submitted that the entire records filed by the petitioner himself in the typed set of papers would show that the enquiry officer has given full opportunity to the petitioner and therefore there is absolutely no grievance on the part of the petitioner. As far as the request of the petitioner for representing through one Mr.Purushothaman, the same was rejected by the second respondent on the ground that there is no provision for appointment of outsiders to represent the delinquent in a departmental proceeding. He would also submit that the petitioner in fact required a copy of the movement register along with the entry dated 21.01.2004 and based on that he made representation also. He would also submit that the petitioner having participated in the enquiry, cannot question the validity of the enquiry on the basis of the denial of natural justice. He would also submit that the petitioner himself admits that he has filed appeal against the order of the second respondent, to the Secretary to the Government of India, Ministry of Shipping, New Delhi-110001 on 01.07.2004 and it is for him to pursue the said appeal and not to file a writ petition, when such appeal remedy has been resorted to by the petitioner.

7. I have heard Mr.R.Egambaram, the petitioner (party-in-person) and also Mr.R.Gowtham Naryanan, learned counsel appearing for the respondents.

8. Even though on the face of it, I am satisfied that the contention of the petitioner that no opportunity was given to him cannot be accepted, it is seen from the records of the petitioner that he has filed appeal against the impugned order of the second respondent to the Secretary to Government of India, Ministry of Shipping, New Delhi dated 01.07.2005, and he has been writing so many representations to the appellate authority either by

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representation or by review petition dated 03.09.2005 and under such circumstances, I am of the considered view, that the writ petition at this stage is not maintainable, leaving it open to the petitioner to pursue his appeal remedy before the appellate authority, before whom he has already filed the appeal on 01.07.2005 as admitted by himself. This court is unable to give any direction to the appellate authority, since the appellate authority is not a party before this Court. In these circumstances, making it clear that it is open to the petitioner to approach the appellate authority, viz., the Secretary to Government of India, Ministry of Shipping, New Delhi-110 001, and pursue his appeal based on his grounds of appeal against the impugned order of the second respondent dated 28.06.2005, the writ petition stands dismissed. No costs.

9. W.P.No.12562 of 2006 is filed by the petitioner as party-in-person, challenging the order of the second respondent dated 26.12.2005, under which the petitioner was awarded punishment of withholding of one increment for a period of three years with cumulative effect as per Regulation 8 of the Port Trust Employees CCA Regulation 1988. It is the case of the petitioner that the second respondent has framed certain charges against the petitioner on 03.03.2004 alleging that he has entered into the office on the second floor on 20.02.2004 at 8.30hours and used the typewriter during out of officer hours, when he was under suspension. The said allegation is made, based on the report of one K.S.Madan Mohan, peon. In this case also the petitioner has requested the assistance of one D.Purushothaman. However, the same was not accepted and the enquiry was conducted by the enquiry officer V.Muralidharan. The claim of the petitioner to have the assistance of Mr.D.Purushothaman, which was rejected on 04.09.2004, on the basis that the regulation does not provide for appointment of outsider, as the said person is neither an employee nor an office bearer of the recognised union functioning in the Chennai Port Trust. Further, the representation of the petitioner was also rejected on 13.10.2004. Various witnesses were examined including the said peon, Madan Mohan, apart from the Inspector and Sub-Inspector. By letter dated 17.03.2004, the petitioner has requested the Deputy Chairman, Chennai Port Trust to change the enquiry officer. He has also complained to the Secretary, Ministry of Shipping, New Delhi by letter dated 22.07.2004 regarding the change of enquiry officer.

10. Ultimately, the enquiry officer submitted his report on 15.06.2005 and enclosing the same, the petitioner was called upon to give his further written statement. Ultimately, the second respondent has passed the order awarding the said punishment of withholding one increment for a period of three years. It is also the case of the petitioner that as against the order of the second respondent dated 26.12.2005, the petitioner has filed an appeal before the respondent on 21.01.2006. Since no order has been passed, the present writ petition has been filed challenging the impugned order of the second respondent.

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11. The petitioner, party-in-person would reiterate the contentions raised by him in the affidavit filed in support of the writ petition. His main contention again is that he was not permitted to be assisted by the said Purushothaman, and the said claim was rejected. He would also submit that the enquiry officer acted in a biased manner. On the other hand, the learned counsel appearing for the respondent Mr.Gowtham Narayanan would again reiterate that in this case also an elaborate enquiry was conducted. The document requested by the petitioner has been furnished to him and there is no question of any bias or violation of the principle of natural justice.

12. I have heard Mr.R.Egambaram, the petitioner, party-in-person and also Mr.R.Gowtham Naryanan, learned counsel appearing for the first and second respondents and also perused the records.

13. Admittedly, against the impugned order of the second respondent dated 22.06.2005, the petitioner has filed an appeal on 22.01.2006. When such appeal which is stated to have been preferred as per Rule 21(a) of the Madras Port Trust CCA Regulation is pending, I do not think this writ petition can be maintainable at this stage, except that a direction can be given to the second respondent to dispose of the appeal.

14. In the result, the writ petition is disposed of with a direction to the second respondent to consider the appeal filed by the petitioner dated 21.01.2006, against the impugned order of the second respondent dated 26.12.2005 and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

15. W.P.No.42119 of 2006 is filed challenging the order of the second respondent dated 10.08.2006, in and by which, the second respondent has rejected the claim of the petitioner to allow him to work over time. It is seen that the petitioner who is working as store supervisor has made a representation to the Deputy Chairman, Chennai Port Trust on 01.06.2006, alleging that he has been working as Store Supervisor for the past 21 years and also stating that from 1993 onwards, when other section staff members are posted to work for over time, such benefit has not been conferred to him, as according to him, this is a biased attitude.

16. It is in response to the representation of the petitioner, the second respondent has passed the impugned order stating as follows:

"He is hereby informed that the employees are allowed to work over time only on necessity/exigencies of work. Hence, your request to post to work over time cannot be considered."

17. According to the petitioner, he would state in the affidavit as submitted by him as party-in-person, that all his section staff members who are juniors have been given over time

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facilities for the past 12 years, whereas the same has been denied to him.

18. The respondents have filed the counter affidavit. In the counter affidavit filed by the second respondent, he specifically states that the petitioner is presently posted as stores supervisor in Tyre Ward Section and in that Section, there is no over time work, and therefore, the question of granting over time to the petitioner does not arise.

19. Mr.R.Gowtham Narayanan, learned counsel appearing for the respondents has also produced the files. The averments made by the second respondent in his counter affidavit filed stating that the petitioner is working in the Tyre Ward Section, is not denied by the petitioner. On a perusal of the files produced by the learned counsel for the respondents, it is seen that in respect of various staff members like fuel staff in stores department, Clearance staff, establishment staff and steel staff, the staff members have been given over time work, while in respect of Tyre Ward Section, nobody from the said Section appears to have been given over time work. In view of the above said facts and circumstances, on perusal of the original records and due to the reason that claiming over time is not a matter of right, I am of the considered view, that there is absolutely nothing warrants interference of this Court in the impugned order of the second respondent dated 10.08.2006, excepting to make it clear that in future as and when such situation arise for allowing over time work to the department wherein the petitioner is working, the second respondent shall consider the same and provide the said facility of over time to the petitioner.

20. This writ petition also stands dismissed with the above observation. No costs. Consequently, connected WPMP.Nos.2381 and 2382,14146 and 1 of 2006 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Chairman
Chennai Port Trust, Chennai-600 001.

2.The Controller of Stores (I/C)
Chennai Port Trust
Chennai 600 001.

+3ccs to Mr.R.Gowthamanarayanan, Advocate Sr 8730 to 8732

GV(CO)
km/20.2.

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